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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,573	03/12/2004	Michael White	21854-00032-US1	6504
30678	7590	11/02/2005		EXAMINER
CONNOLLY BOVE LODGE & HUTZ LLP SUITE 800 1990 M STREET NW WASHINGTON, DC 20036-3425			ST CYR, DANIEL	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/798,573	WHITE, MICHAEL	
	<b>Examiner</b> Daniel St.Cyr	<b>Art Unit</b> 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 12 March 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

1. It is noted that this application is continuation in part of the application 10/398,460, filed 4/4/03, now patent 6,764,004.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,764,004 (hereinafter '004 Patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claimed invention is somehow a broader recitation of the '004 Patent. For instance, in the present claim and the '004 Patent, the applicant claims:

- i)"A method of delivering goods between a consignor and a consignee in which
  - a) the consignor and consignee agree to the conditions of transport and storage of the consignment including the maintenance of the temperature of the consignment
  - b) the agreed conditions and consignment details are entered into a central database accessible by the consignor and consignee
  - c) at least one condition sensing data logger capable of sensing the agreed conditions

including temperature are attached to the consignment

d) the data logger is programmed to sense the conditions at agreed intervals and to store the readings or transmit the readings to said central database

e) the consignee upon receipt of the goods reviews the data logger memory or the transmitted readings and determines if the agreed conditions have been complied with

f) the consignee then enters into said database whether the conditions have been complied with or not." Wherein in the '004 Patent the applicant claims:

ii)"A logistics chain management system for use by members who include goods suppliers, transport providers, storage providers, and customers wherein the members agree to comply with predetermined logistic conditions for the goods which system includes:

a) a communication network accessible by members;

b) data storage means accessible over the network for storing details of a consignment of goods;

c) means in said communication network for making available to appropriate members details of said consignment;

d) means for members to communicate with each other over the network;

e) means to collect data corresponding to the predetermined condition of the goods during transportation and storage;

f) means to record and track data pertaining to said consignment as the consignment moves along the supply chain to the consignment eventual destination including the current location of the goods and compliance with the predetermined conditions; and

g) means to generate reports from the data collected, wherein one of the

predetermined conditions is the maintenance of the temperature of the goods within a predetermined range and the means for tracking the data incorporates a temperature sensor and data logger that periodically senses the temperature of the goods and stores the data or transmits the data to said network accessible storage means.

The instant claim encompasses the claimed invention of '004 Patent.

Thus, in respect to above discussions, it would have been obvious to an artisan at the time the invention was made to use the teaching of claims 1-8 of '004 Patent as a general teaching for delivering the goods, to perform the same function as claimed in the present invention. The instant claim obviously encompasses the claimed invention of the '004 Patent and differ only in terminology. The extent that the instant claims are broaden and therefore generic to claimed invention of '004 patent [species], In re Goodman 29 USPQ 2d 2010 CAFC 1993, states that a generic claim cannot be issued without a terminal disclaimer, if a species claim has been previously been claimed in a co-pending application.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from the claims in a first patent. IN re Vogel, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. & 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C>FR> &1.78(d).

*Allowable Subject Matter*

4. Claim 1 would be allowable upon filing of a terminal disclaimer.

5. The following is a statement of reasons for the indication of allowable subject matter:  
Although the prior art of record teaches an Internet based logistics chain management system which includes a communication network, accessible data storage, tracking components for tracking the consignment, etc., the prior art of record fails to disclose or fairly suggests all the specific details of the tracking information including tracking if a predetermined condition of the consignment is met at a current location, a data logger to sense the conditions at agreed intervals to transmit the sensed conditions to the central database, etc. These limitations in conjunction with other limitations in the claims were not shown by, would not have been obvious over, nor would have been fairly suggested by the prior art of record.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fanagan, US Patent No. 6,945,459. Stephenson et al, US Patent No. 6,094,642. Garwood, US Pub. 2003/0185937.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel St.Cyr  
Primary Examiner  
Art Unit 2876

DS  
October 21, 2005

A handwritten signature in black ink, appearing to read "Daniel St.Cyr", is enclosed within a large, roughly oval-shaped oval. A horizontal line extends from the right side of the oval.